IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO.1101/2006

Mohd. Umar Bhai
Vs.
State of Rajasthan.

Date of Order October 11, 2007

PRESENT

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr.G.R. Punia, for the petitioner.
Mr.Vishnu Kachchwaha, Public Prosecutor.
Mr.Sandeep Mehta, for the respondents.

REPORTABLE

BY THE COURT:-

By way of filing present revision petition, the petitioner is challenging the order dated 12th September, 2006 passed by learned Additional Sessions Judge (Fast Track), Parbatsar in Sessions Case No.19/2002 (No.83/1998), whereby the learned trial court rejected the application filed by the petitioner under Section 319 Cr.P.C.

and refused to summon Guman Singh and Shamim Khan as accused-persons.

According to the facts inter alia stated in the FIR No.90/1997 dated 17th June, 1997, it is alleged that on the same day in the early morning, accused-persons Ram Singh, Girdhari Singh, Guman Singh, Shamim Khan and Richpal Singh forcibly taken away the brother of petitioner Usman from his house. Usman was taken in the jeep by force by aforesaid accused-persons and was taken to the police station, Kuchaman City. After sometime, an information was received that the dead-body of Usman was lying in the Government Hospital, Kuchaman City. On the above information, a case under Sections 302, 342, 166/34 I.P.C., was registered against Ram Singh, Girdhari Singh, Ranjeet Singh, Richpal Singh and Shamim Khan.

After investigation, charge-sheet was filed only against Girdhari Singh, Ram Singh, Richpal Singh and Ranjeet Singh, but no charge-sheet was filed against Guman Singh and Shamim Khan, though they were named in the F.I.R., and

their role was clearly stated in the statement recorded under Section 161 Cr.P.C.

After filing challan, the case committed to the Sessions Court and was ultimately transferred to the learned Additional Sessions Judge (Fast Track), Parbatsar for trial.

In the trial court, the role of accused-persons namely Guman Singh and Shamim Khan was assigned in the statements of prosecution witnesses, therefore, an application under Section 319 Cr.P.C. was filed for adding both the persons as accused-persons, who are police constables and their names were mentioned in the FIR also. However, learned trial court after hearing both the parties, rejected the application filed under Section 319 Cr.P.C. vide impugned order dated 12th September, 2006 which is under challenge before this Court.

Learned counsel for the petitioner-complainant vehemently submitted that names of Guman Singh and Shamim Khan were also mentioned in

the FIR Exhibit-P1. Likewise in the statement of PW-3 Mohd. Umar Bhati, it is specifically stated by him that on 17th June, 1997 in the morning at about 6-6.15 AM when he was sitting in front of his house, a police jeep arrived and stopped in front of his brother's house Usman. His brother Usman was forcibly taken into the jeep by the police personnel and in the jeep both these persons namely Guman Singh and Shamim Khan, police constables were also sitting alongwith other charge-sheeted persons. All these persons including constables Guman Singh and Shamim Khan pushed Usman into the jeep and taken to the police station. Thereafter, at about 08:45 AM he received a telephonic message from neighbour's house that body of his brother Usman is lying in the hospital. Upon information, he immediately rushed to the hospital, where Shamim Khan informed that his brother has died.

Similarly, it is contended by learned counsel for the petitioner that in the statement of PW-6 Mohd. Ismile, he has categorically stated that on the day of incident, he was at his house

and a police jeep arrived at the house of deceased Usman, in which Shamim Khan, Guman Singh, Sichpal Singh were sitting and they forcibly taken Usman in the jeep and took him to the police station. Similar statements were also given by PW-5 Samsuddin and PW-35 Smt. Madeena wife of late Usman.

In the statement of PW-35 Smt. Madeena, it is specifically stated that in all four persons namely Ram Singh, Richpal Singh, Guman Singh and Shamim Khan came at her house on the day of incident and forcibly took away her husband Usman to the police station. It is also stated that these persons informed Usman that he has been called by SHO. Meaning thereby, in the statement recorded in the trial court, there is evidence on record against Guman Singh and Shamim Khan, constables with regard to forcibly taking away Usman from his house to the police station. Thereafter, he was found dead in the Government Hospital, Parbatsar. This evidence speaks volumes that Guman Singh and Shamim Khan both have participated in the occurrence and have pleaded

active role in abducting the deceased Usman and ultimately he died in the police custody, therefore, at the time of deciding application filed under Section 319 Cr.P.C., it was the duty of the learned trial court to add Guman Singh and Shamim Khan constables as an accused, because there is material on record against them. The learned trial court has committed an error while rejecting application for adding and summoning Guman Singh and Shamim Khan as accused-persons in this case. Therefore, it is prayed that in view of the judgments reported in 2001 Cr.L.R. (Raj.) 707 (Atar Khan & Anr. Vs. State of Rajasthan), 2005 Cr.L.R. 1457 (Vasudev Neyar Vs. State of Kerala), 1998 Cr.L.R. (Raj.) 151 (Smt. Bhonti Vs. State of Rajasthan & Anr.) and 1999 Cr.L.R. (Raj.) 469 (Hahari Ram Vs. State of Rajasthan & Anr.), the order passed by learned trial court may kindly be set aside and the trial court may be directed to take cognizance against Guman Singh and Shamim Khan, because there is sufficient evidence on record for adding them as accused-persons.

Learned counsel for the respondents

vehemently opposed the prayer and argued that the order passed by the learned trial court is perfectly in accordance with law. There is no error in the order of learned trial court.

Learned counsel for the respondents has invited the attention of this Court towards the judgment rendered by Hon'ble Supreme Court in case of Michael Machando & Anr. Vs. Central Bureau of Investigation & Anr., reported in (2000) (3) SCC 262, wherein it has been held by Hon'ble Supreme Court that if upon scanning of evidence it is found that ultimate conviction is not possible, then trial court can refuse to exercise its discretionary power for adding any accused while rejecting application under Section 319 Cr.P.C. In this case, learned trial court has rightly rejected the application filed by the petitioner for adding Guman Singn and Shamim Khan as accused-persons. Therefore, no interference is required and this revision petition deserves to be dismissed.

I have perused the impugned order dated

12th September, 2006 and the material placed on record, so also considered the rival arguments advanced by learned counsel for the parties.

It is true that if during course of trial and after recording statements of prosecution witnesses, if any evidence comes on record against those persons who were not charge-sheeted by the police then cognizance can be taken against them during trial under Section 319 Cr.P.C. But at the time of deciding application filed under Section 319 Cr.P.C., it is the duty of the court to consider the statements of prosecution witnesses.

In the present case, from the statement of complainant PW-3 Mohd. Umar Bhati, it is clear that he has categorically named Guman Singh and Shamim Khan along with co-accused persons and the same averments were made by him in the FIR also. Likewise in the statement of PW-5 Samsuddin, he has categorically stated that Shamim Khan constable was sitting alongwith deceased Usman in the jeep and two constables were also sitting on front seat of jeep and two constables were sitting

in the back seat of jeep and he has stated the name of Guman Singh also. PW-6 Mohd. Ismile also gave statement that Guman Singh and Shamim Khan constables were present at the time of occurrence of abduction of Usman. The important witness, who was in the house is PW-35 Smt.Madina wife of Usman who has categorically stated that Guman Singh and Shamim Khan came to her residence and took away her husband to the police station. Meaning thereby, material evidence of presence at the time of abducting Usman from his house against Guman Singh and Shamim Khan is on record. However, it appears that trial court while deciding the application filed under Section 319 Cr.P.C. has scanned the evidence as if trial court was deciding the case finally after due trial.

In my opinion, at the time of deciding the application filed under Section 319 Cr.P.C., if material evidence is on record for adding an accused then, the learned trial court is not required to scan entire evidence as if it is adjudicating the matter finally. It appears from the order impugned dated 12th September, 2006 that

learned trail court has decided the application filed under Section 319 Cr.P.C. as if learned trial court was deciding this case after completion of trial. Therefore, in my opinion, it is a fit case in which the order impugned passed by learned trial court rejecting the application filed under Section 319 Cr.P.C. deserves to be quashed and it is desirable upon the evidence on record that cognizance be taken against two constables Guman Singh and Shamim Khan who were present at the time of abduction of deceased Usman, who was ultimately died in police custody on 17th June, 1997. There is material on record to add Guman Singh and Shamim Khan as accused and they are required to be tried alongwith other accused-persons who were charge-sheeted.

Accordingly, the criminal revision petition is allowed. The impugned order dated 12th September, 2006 is quashed and set aside. The application under Section 319 Cr.P.C. filed by the prosecution is allowed. The trial court is directed to add Guman Singh and Shamim Khan, police constables as accused and they may be summoned by way of issuing

bailable warrants in the sum of Rs.5,000/- each and be tried alongwith main accused.

(GOPAL KRISHAN VYAS), J.

A.K. Chouhan/-